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ABSTRACT

Section 108 of the Copyright Act of 1976, Title 17 of the United States Code, spells out conditions under which libraries may photocopy copyrighted works without infringing the rights of their owners. Section 108(i) directs the Register of Copyrights to prepare and file a report every 5 years setting forth the extent to which this section has achieved the intended balancing of the rights of creators and the needs of users. The bill H.R. 1612 simply deletes paragraph (i) of section 108, thereby eliminating this recurring reporting requirement. On April 10, 1991, the Subcommittee on Intellectual Property and Judicial Administration held an oversight hearing on the Copyright Office. Evidence exists that section 108(i) has fulfilled its purpose of reporting to the Congress about the practical operation of the library reproduction provisions and the experience of copyright owners and users under the law. Additionally, it is estimated by the Congressional Budget Office that enactment of H.R. 1612 would result in savings by the Federal Government of $150,000 over the next 3 years. This report includes the legislative history and background of the bill as well as the proposed changes in the existing law. (DB)

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102D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
102-196

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ELIMINATION OF LIBRARY REPRODUCTION REPORTING REQUIREMENT

AUGUST 2, 1991.--Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1612]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1612) to amend section 108 of title 17, United States Code, to eliminate the library reproduction reporting requirement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY AND PURPOSE

Section 108 of the Copyright Act of 1976, title 17 of the United States Code, spells out conditions under which libraries may photocopy copyrighted works without infringing the rights of the owners of copyrighted works. Section 108(i) directs the Register of Copyrights to prepare and file a report every five years "setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users." Reports were filed in 1983 and 1988. H.R. 1612 simply deletes paragraph (i) of section 108, thereby eliminating this recurring reporting requirement, whose purpose has been fulfilled by the reports already filed.

HEARINGS

On April 10, 1991, the Subcommittee on Intellectual Property and Judicial Administration held an oversight hearing on the Copyright Office. The Register of Copyrights, Ralph Oman, testified on behalf of H.R. 1612, giving policy reasons in favor of the bill and

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stating that the Office had canvassed publisher and library groups which responded that they had no objection to the legislation.

COMMITTEE VOTE

On June 20, 1991, a reporting quorum being present, the Committee on the Judiciary ordered H.R. 1612 reported to the full House by voice vote.

DISCUSSION

I. LEGISLATIVE HISTORY

On March 22, 1991, H.R. 1612 was introduced by the Chairman of the Subcommittee on Intellectual Property and Judicial Administration, William Hughes, with cosponsorship from the ranking minority Member of the Subcommittee, Carlos Moorhead. Chairman Hughes made an explanatory floor statement.[1]

On May 1, 1991, the Subcommittee marked up H.R. 1612 and reported the bill favorably to the full Committee without amendment by voice vote, a quorum of Members being present.

On June 20, 1991, the full Committee marked up H.R. 1612 and, a quorum of Members being present, favorably reported the bill by voice vote, no objections being heard.

On March 21, 1991, Senator DeConcini introduced S. 756, section 2 of which is identical to H.R. 1612.

II. BACKGROUND

In passing the general revision of the copyright laws in 1976, Congress added a requirement of a recurring five-year report to the Library reproduction provisions of the Copyright Act.[2] The Library reproduction and fair use copying limitations of the general revision bill had been sharply debated. A compromise was reached, which Congress hoped represented a fair balance between the rights of creators and the needs of library users. Congress included the recurring reporting requirement as a mechanism to provide oversight of library photocopying developments to enable it to assess whether the appropriate balance had been struck in enacting section 108 of the Copyright Act.

The Congress now has had more than 12 years experience under the library reproduction provisions of section 108. While publishers and librarians may occasionally differ about the enforcement of section 108 in specific cases, it is clear that Congress struck a fair balance between the public and proprietary interests. The 1988 report of the Register of Copyrights confirms this assessment. The Register reported that "[m]ost of the major library associations (the

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[1] See 137 Cong. Rec. E1105 (daily ed. March 22, 1991).

[2] This requirement is contained in subsection 108(i) of title 17, United States Code, which provides as follows:

> (i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

American Library Association, the Association of Research Libraries, the Special Libraries Association, and the Medical Library Association) stated that Congress has achieved a statutory balance. Representatives of copyright proprietors (the American Association of Publishers, Harcourt Brace Jovanovich and the Authors League of America) also joined in the view that a reasonable balance between the competing interests has been struck in the statutory formation of § 108."[3]

At the recent Subcommittee oversight hearing on the Copyright Office, the Register of Copyrights recommended elimination of the recurring library reproduction report, a proposal which is supported by library and publisher groups.[4] As the Register observed, "any remaining problems regarding library photocopying can be resolved either through education guidelines and collective arrangements, or through enforcement of the existing law by copyright owners."[5]

Copyright infringement lawsuits have in fact been brought in Federal court by publishing interests against commercial copying services and large corporations that engage in substantial research without paying royalties for copying activities in excess of fair use.

Publishers have not generally found it necessary to bring suits for infringement against nonprofit libraries, and instead rely upon discussion and guidelines to curb any encroachment upon their proprietary interests. In the one reported case against a university for excessive photocopying, the publishers and the university settled the case when the university agreed to adopt a photocopying policy statement and generally take steps to avoid copying in excess of fair use. *Addison-Wesley Publishers Co., Inc.* v. *New York University*, Civ. No. 82-8333 (S.D.N.Y., filed December 14, 1982).

The Committee is pleased to note the consensus that the Congress achieved a fair, workable accommodation in section 108 between the proprietary and public interests. The recurring report mechanism of section 108(i) has fulfilled its purpose of reporting to the Congress about the practical operation of the library reproduction provisions and the experience of copyright owners and users under the law. Since the statutory balance has been achieved, Congress can dispense with further automatic reports and save the taxpayers' money. Elimination of the report requirement will in no way affect the fundamental balancing of rights between authors and users found in section 108.

Further, repeal of the section 108(i) report requirement will be immediately felt in the Copyright Office as there will be no report in 1993. In the view of the Committee, a cost savings of approximately $500,000 will be achieved. The Copyright Office will be able to devote these resources elsewhere.

If any legislative issues arise regarding library reproduction of copyrights works, Congress can air them through the usual proce-

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[3] Report of the Register of Copyrights, Library Reproduction of Copyrighted Works (17 U.S.C. 108) 118 (1988).

[4] Hearing on Oversight of the Copyright Office and Copyright Royalty Tribunal Before the Subcomm. on Intellectual Property and Judicial Administration of the House Comm. on the Judiciary, 102nd Cong., 1st Sess. (April 10, 1991) (Statement of Ralph Oman, Register of Copyrights at 15-16).

[5] Id.

dure of legislative hearings. The Congress can also ask the Register of Copyrights to report on the matter at any time, without a statutory reporting requirement. A future report by the Register may indeed be necessary to assess the impact of technological changes.

For these reasons, the Committee concludes that a compelling case has been made for elimination of the statutory report requirement found in section 108(i) of the Copyright Act.

SECTION-BY-SECTION ANALYSIS

This one section bill amends section 108 of title 17, United States Code, by striking (i) in its entirety.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the proposed legislation does not provide new budget authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 1612, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 1991.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1612, a bill to amend section 108 of title 17, United States Code, to eliminate the library reproduction reporting requirement, as ordered reported by the House Committee on the Judiciary on June 18, 1991.

CBO estimates that enactment of H.R. 1612 would result in savings by the federal government of $150,000 over the next three years, based on information provided by the Copyright Office of the Library of Congress. The bill would remove the requirement that

the Register of Copyrights report regularly on how well current law has achieved a fair balance between the rights of creators and the needs of library users to reproduce copyrighted materials.

Enactment of H.R. 1612 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1612 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 108 OF TITLE 17, UNITED STATES CODE

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) * * *

* * * * * * *

[(i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.]

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